

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	08-00121-01-CR-W-GAF
JAMES M. FLEMING,)	
)	
Defendant.)	

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on June 30, 2010. Defendant Fleming appeared in person and with appointed counsel Bill Raymond. The United States of America appeared by Assistant United States Attorney Bruce Clark.

I. BACKGROUND

On May 8, 2008, an indictment was returned charging Defendant with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1).

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Mr. Clark announced that Paul Becker and Brian Casey will be the trial counsel for the government. The case agent to be seated at counsel table is Darrell Reach, Kansas City, Missouri Police Department.

Mr. Raymond announced that he will be the trial counsel for Defendant Fleming. Julie Eilers and Troy Schnack will assist.

III. OUTSTANDING MOTIONS

There are no pending motions in this case.

IV. TRIAL WITNESSES

Mr. Clark announced that the government intends to call 10-12 witnesses without stipulations or 8-9 witnesses with stipulations during the trial.

Mr. Raymond announced that Defendant Fleming intends to call 15 witnesses during the trial. Defendant may testify.

V. TRIAL EXHIBITS

Mr. Clark announced that the government will offer approximately 58 exhibits in evidence during the trial.

Mr. Raymond announced that Defendant Fleming will offer approximately 50 exhibits in evidence during the trial.

VI. DEFENSES

Mr. Raymond announced that Defendant Fleming will rely on the defense of general denial.

VII. POSSIBLE DISPOSITION

Mr. Raymond stated this case is definitely for trial.

VIII. STIPULATIONS

Stipulations are likely as to Defendant's prior felony conviction and the interstate nexus of firearm.

IX. TRIAL TIME

Counsel were in agreement that this case will take 4-5 days to try because there will be DNA evidence and medical evidence.

X. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS

The U. S. Magistrate Judge ordered:

That, in addition to the requirements of the Stipulations and Orders filed July 8, 2008, counsel for each party file and serve a list of exhibits he intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by June 30, 2010;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, July 7, 2010;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested jury instructions¹ by or before noon, Wednesday, July 7, 2010. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

XI. UNUSUAL QUESTIONS OF LAW

Motions in limine will probably be filed concerning prior bad acts under Federal Rule of Evidence 404(b). There will be expert testimony on DNA.

XII. TRIAL SETTING

All counsel and Defendant were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on July 12, 2010. The parties request the second week of the docket due to witness and attorney conflicts.

¹Counsel in all cases assigned to be tried before Chief Judge Fernando Gaitan, Jr., as reflected in the trial letter, shall meet and prepare a packet of agreed proposed jury instructions to be submitted to Judge Gaitan and e-mailed to marylynn_shawver@mow.uscourts.gov and rhonda_enss@mow.uscourts.gov by July 9, 2010. To the extent there are disagreements to certain instructions, each attorney shall tab and submit his or her preference on those instructions. The instructions shall be listed in the order they are to be given.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
June 30, 2010

cc: Mr. Kevin Lyon